

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Office of the City Clerk

Record without fee under
Section 6103 - Government Code
State of California

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING
INITIAL ACCEPTANCE OF PUBLIC IMPROVEMENTS AND APPROVING REDUCTION IN
PERFORMANCE BOND FOR SEWER 11B-2/11C IMPROVEMENTS, PROJECT NO. 2762,
TRACT NO. 10138**

WHEREAS, Public Improvement Plan No. 2-1159 (“Public Improvements”) was approved by the City Council of the City of Milpitas (“City Council”) on March 19, 2013, for Tract No. 10138, more commonly known as PACE Subdivision (Sewer 11B-2/11C), Project No. 2762, under and pursuant to the provisions of an Acquisition and Reimbursement Agreement (“ARA”) between the City of Milpitas, a municipal corporation of the State of California, and Contour Trade Zone, LLC, a Delaware limited liability company (“Subdivider”); and

WHEREAS, Contour Trade Zone, LLC, as Principal, and Philadelphia Indemnity Surety Insurance Company, as Surety, executed and posted a certain Faithful Performance Bond No. PB00473800009 conditioned upon the faithful performance of the provisions of the ARA and upon the faithful performance of all Public Improvements work required thereunder; and

WHEREAS, the Public Improvements for the PACE (Sewer 11B-2/11C) project have been completed; and

WHEREAS, the ARA provides that the security shall extend for a period of one year after the date of acceptance of Public Improvements to cover the warranty period of said improvements under the ARA; and

WHEREAS, the City Council is willing to consent to a reduction in the penal sum of said security during said one year warranty period; and

WHEREAS, the City Engineer of the City of Milpitas (“City Engineer”) has made a final inspection of the Public Improvements for the PACE (Sewer 11B-2/11C) project and recommends that the City Council accept the Public Improvements as constructed in accordance with the approved plans and specifications.

NOW, THEREFORE, the City Council hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. Those certain Public Improvements installed with Tract No. 10138, PACE (Sewer 11B-2/11C) project, Project No. 2762, are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer.
3. The penal sum of that certain Security furnished by the above-named Subdivider, as Principal, and the above-named Surety in connection with the ARA for PACE (Sewer 11B-2/11C) project may be reduced to the sum of \$220,000, upon request of said Principal and Surety, said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the Subdivider or his/its Surety, or sureties, by law or by the ARA, save and except as expressly set forth herein.

PASSED AND ADOPTED this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney